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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/788,834	02/28/2004	John Wayne Countz		8018

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EXAMINER

SOOHOO, TONY GLEN

ART UNIT	PAPER NUMBER
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1723

DATE MAILED: 09/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/788,834

Applicant(s)

COUNTZ, JOHN WAYNE

Examiner

Tony G. Soohoo

Art Unit

1723

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>2-28-04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the features of a permanent magnet, reed switch and a cycle trigger assembly as claimed in claims 9, 10, 11 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 9-11, 14-15 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The specification fails to adequately describe and enable how to make the structural cooperation of the magnet, and magnetic reed switch, and the manner in which the cycle circuit is made to provide the recited mixing cycle operation as required in the language of the claims.

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 2-18 recites the limitation "the work piece holding device" in parent claims 2, 4. However, there is insufficient antecedent basis for this limitation in the claim.

6. Claims 1, 3-4, 6, 8-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Independent claim 1 points out unconnected elements of a platform with elastic bands, an isolated element of a source of vibration or gyration, and another isolated

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element of a counter dampening device without any language in positively pointing out the structural connection between the isolated elements to form a single cooperative invention.

Claim 1 is unclear in what is being "counter dampened" by the counter dampening device since the claim does not positively point out anything that needs to be dampened. It is noted that claim is being read that a portion of the work piece holding device is structurally equivalent to a counter dampener as pointed out in claim 18.

Claims 9 and 11 points out an operation of the motor cycle without sufficient structural elements to provide for the recited operation such as a switch, thus the claims are incomplete.

Claims 12-13 points out the effect of the device upon the product and thereby fails to further limit in a positive structural sense to the claimed apparatus structure.

Claim 16 points out that a battery eliminator "may be" attached thus does not positively point out and require the limitation of such structure to permit the recited operation and thus is structurally incomplete.

Claim 17 points out that the batteries "may be of the rechargeable type" and also does not positively point out and require the limitation of such structure to permit the recited operation and thus is structurally incomplete.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 2, 5, and 7 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Rohan 5238302.

9. Claims 2, 5, and 7 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Sawyer 5399013.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 1 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Davis 3159384 in view of Stelwagen 3389881.

Davis discloses a work piece holder 10, 11, the work piece container itself 12, a source of vibration or gyration 14, 18 and eccentric with 33, and a platform 20, 24, see figure 2 suspended by elastomeric springs 28, 29.

The Davis reference discloses all of the recited subject matter as defined within the scope of the claims with the exception of having the platform suspended by elastic bands in contrast to the elastic springs.

The reference to Stelwagen teaches that a motor for assembly 105 and rotational work piece holder bearings 108 and work piece drum 104, figure 8, may be supported in place by rubber band rings 111, see column 5, lines 60 through column 6, lines 27.

In view of the teaching that one may use rubber bands to hold the work piece and motor into place, it is deemed that it would have been obvious to one of ordinary skill in the art to substitute for the springs of Davis with rubber bands, as introduced by Stelwagen, so that the platform may be held in a more efficient manner whereby the use elastic springs or bands are commonly known structural functional equivalents.

12. Claims 4, 6, 8-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Davis 3159384 in view of Stelwagen 3389881, as applied to claim 1 above, and further device Sawyer 5399013

Davis 3159384 in view of Stelwagen 3389881 discloses all of the recited subject matter as defined within the scope of the claims with the exception of a foam plug work piece holding device

The reference to Sawyer 5399013 teaches that a work piece holding device upon a motor 44 may have a foam member 60 to hold the container 22.

In view of the teaching of Sawyer, it is deemed that it would have been obvious to one of ordinary skill in the art to modify the work piece holder of Davis with a

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workspace holder with a foam member as taught by Sawyer so that the container may be held in a more positive member.

With regards to the timer circuit and cycle operation and reed switch operation, with the operation of motors in the art of vibrator motor activation, it is old and well known to provide reed switches, timer circuits and reversible rotation in order to optimize the activation and amount of mechanical energy imported into the mixer container, accordingly, it is deemed that it would have been obvious to one of ordinary skill in the art to provide and modify the control of the motor of Davis with such a timer and mixer cycle operation in order to optimize mixing and a reed switch assembly so that it may be activated in a more efficient manner.

With regards to the use of DC motor and rechargeable batteries, the use of DC/battery operated motors are old and well known in the art of motors in order to provide for power portability in operation, accordingly, it is deemed that it would have been obvious to one of ordinary skill in the art to substitute and provide the motor and power device of the Davis device with a DC motor and rechargeable battery in order to provide a portable device in power operation.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Tannenbaum et al 5052812 teaches the use of reed switches in motor controls. The following disclose suspended mixer platforms: Zipperer 3539156, figure 10-11, Dschida 6059446, Kraft 3061280, Moore et al 3850580, Kahl 4747693 and Davidson et al 5988869. Hanagan 6874748, column 6, lines 50-59 teaches that a

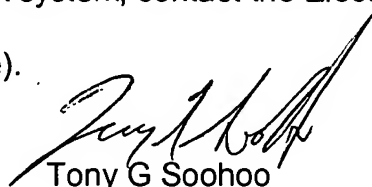
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metal spring and elastic bands are functional equivalents. Currie 5273357 teaches a nail polish mixer. The followings disclose foam holders Cannata-nowell Des 364249 and Nuener et al 4329068.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tony G. Soohoo whose telephone number is (571) 272 1147. The examiner can normally be reached on 7-5PM, Tue-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda Walker can be reached on 571-272-1151. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Tony G Soohoo
Primary Examiner
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